

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD E. WILMSHURST,

Plaintiff,

No. CIV S-04-0988 DFL KJM PS

vs.

BILL LOCKYER, Attorney General,

Defendant.

ORDER

Defendants have noticed a motion to dismiss for hearing on May 25, 2005 before the undersigned. This action is presently the subject of an interlocutory appeal of the district court's January 4, 2005 order denying plaintiff's motion for temporary restraining order. Plaintiff has filed an amended complaint and defendants have now responded with a motion to dismiss. It appears that during pendency of the interlocutory appeal, this court lacks jurisdiction to resolve the motion to dismiss. See generally Mayweathers v. Newland, 258 F.3d 930, 935 (9th Cir. 2001).

Accordingly, IT IS HEREBY ORDERED that the parties are advised the court

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1 will inquire into the question of jurisdiction at the hearing on the motion to dismiss.

2 DATED: April 26, 2005.

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6 UNITED STATES MAGISTRATE JUDGE
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